

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

SANDY JUDD and TARA HERIVEL,

Complainants,

v.

AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC., and T-NETIX,
INC.,

Respondents.

Docket No. UT-042022

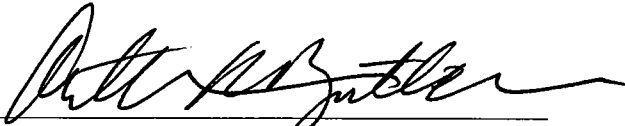
**T-NETIX, INC.'S MOTION TO
DISMISS**

1. T-NETIX, Inc. ("T-NETIX"), respondent in this proceeding, hereby moves to dismiss. Attached are copies of (1) Defendant T-Netix, Inc.'s Motion for Summary Judgment (Exhibit 1), (2) T-Netix, Inc.'s Reply in Support of Motion for Summary Judgment (Exhibit 2), filed in King County Superior Court Cause No. 00-2-17565-5 SEA, seeking dismissal of Plaintiffs' Consumer Protection Act claims and withdrawal of the referral to the WUTC of the questions whether T-Netix and AT&T were subject to RCW 80.36.520, and if so whether these entities failed to comply with the rate disclosure requirement in that statute. Also attached is a copy of Judge Jeffrey M. Ramsdell's Order Granting Defendant T-Netix's Motion for Summary Judgment (Exhibit 3) entered in that King County Superior Court action.

2. The effect of Judge Ramsdell's Order is to terminate the primary jurisdiction referral to the WUTC, which was the basis for this proceeding. Accordingly, this case should be dismissed.

DATED this 7th day of September, 2005.

ATER WYNNE LLP

By 

Arthur A. Butler, WSBA #04678
601 Union Street, Suite 5450
Seattle, Washington 98101-2327
Tel: (206) 623-4711
Fax: (206) 467-8406
Email: aab@aterwynne.com

and

Of Counsel:
Glenn B. Manishin
Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Attorneys for Respondent T-NETIX, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of September, 2005, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn
Executive Secretary
Washington Utilities and Transportation
Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (360) 586-1150
 Email (records@wutc.wa.gov)

I hereby certify that I have this 7th day of September, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T:

Ms. Letty S. Friesen
AT&T Communications of the Pacific
Northwest
Law Department
919 Congress Avenue, Suite 900
Austin TX 78701-2444

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (303) 298-6301
 Email (lsfriesen@att.com)

On Behalf Of T-Netix:

Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street NW, Suite 500
Washington DC 20036-2423

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (202) 955-9792
 Email (sjoyce@kelleydrye.com)

On Behalf Of T-Netix:

Glenn B. Manishin
Kelley Drye & Warren LLP
1200 19th Street NW, Suite 500
Washington DC 20036-2423

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (202) 955-9792
 Email (gmanishin@kelleydrye.com)

On Behalf Of Judd & Herivel:

Jonathan P. Meier
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle WA 98104

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (206) 223-0246
 Email (jon@sylaw.com)

On Behalf Of AT&T:

Charles H. Peters
Schiff Hardin LLP
233 South Wacker Drive
6600 Sears Tower
Chicago IL 60606

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (312) 258-5600
 Email (cpeters@schiffhardin.com)

On Behalf Of Commission:

Ann E. Rendahl ALJ
Washington Utilities and Transportation
Commission
1300 S Evergreen Park Drive SW
PO Box 47250
Olympia WA 98504-7250

Hand Delivered
 U.S. Mail (first-class, postage prepaid)
 Overnight Mail (UPS)
 Facsimile (360) 586-8203
 Email (arendahl@wutc.wa.gov)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of September, 2005, at Seattle, Washington.

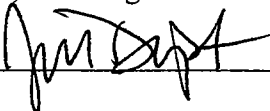


Exhibit 1

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,¹

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY
JUDGMENT**

I. RELIEF REQUESTED

T-NETIX, Inc. ("T-NETIX"), by its attorneys and pursuant to Wash. R.C.P. and
Local Rule 56, hereby moves for summary judgment against Plaintiffs on the ground that
they have suffered no injury and thus lack standing.

II. BACKGROUND

T-NETIX has discovered conclusive evidence that neither of the Plaintiffs herein, Ms.

¹ As Ms. Wright is not a party to that proceeding, Plaintiffs have waived their right to obtain
a ruling from the WUTC to support Ms. Wright's claims in this Court. As such, the Court is
and would be unable to try Ms. Wright's claims.

DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 1

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LAW GROUP

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 Judd nor Ms. Herivel, have suffered any injury in this case because all of the inmate-initiated
2 calls that they received were exempt from the rate disclosure requirements they claim were
3 violated. Being outside the zone of interest of those rate disclosure requirements, Plaintiffs
4 have no claim under the Washington Consumer Protection Act, RCW § 19.86 *et seq.*, and
5 their case should accordingly be dismissed.

6 T-NETIX brought this evidence before the Washington Utilities and Transportation
7 Commission, but their motion was denied for jurisdictional reasons. *See* Motion to Lift the
8 Stay and the Declaration of Sandrin B. Rasmussen filed in support thereof. Having been
9 denied the appropriate relief – dismissal – by the WUTC, T-NETIX respectfully requests that
10 this Court resume consideration of this case in order to affect this result.

11 ALJ Ann E. Rendahl of the WUTC has denied T-NETIX's request for dismissal on
12 the ground that the "role of T-NETIX" in the inmate calls has not been adjudicated. Yet this
13 question goes beyond the threshold issue of whether Plaintiffs' case is justiciable in the first
14 instance. Rather, the question of T-NETIX's "role" is the one this Court referred in
15 November 2000, and it goes to the merits of Plaintiffs' claim – it regards who is liable for
16 Plaintiffs' alleged injury. Yet there is no injury here as a matter of law, leaving no claim to
17 adjudicate and no reason to assign "roles." Accordingly, no further review of this case is
18 required in either the WUTC or this Court.

19 Moreover, both the hearing transcript and ALJ Rendahl's written order indicate that
20 her decision rests more on the notion that standing is not a valid concern in this case rather
21 than a substantive ruling on the evidence. This premise is, of course, false and contravenes
22 the most fundamental principles governing justiciability. The Court's intervention is,
23 therefore, required to ensure that neither it, nor the WUTC, nor the parties endure the
24 expense of litigation for claims that do not, as a matter of law, warrant any relief.

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DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 2

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LAW GROUP

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

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3 **III. EVIDENCE RELIED UPON**

4 T-NETIX relies upon the following evidence in this motion:

- 5 1. Order Denying in Part Defendant T-NETIX, Inc.'s Motion to Dismiss First Amended
6 Complaint – Class Action and Granting in Part and Referring to WUTC, 11/8/00 (“T-
7 NETIX Referral Order”);
8 2. Order Granting AT&T Corp.’s Motion to Dismiss, 11/8/00 (“AT&T Referral Order”);
9 3. T-NETIX Motion for Summary Determination, WUTC Docket No. 042022 4/21/05 (“T-
10 NETIX Motion”);²
11 4. Affidavit of Nancy Lee, Senior Vice President of Billing Services, T-NETIX, Inc., 4/20/
12 05 (“Lee April 20 Aff.”);
13 5. Complainants’ Opposition to Motion for Summary Determination, 5/6/05 (“Opp. to T-
14 NETIX”);
15 6. T-NETIX Reply in Support of Motion for Summary Determination, 5/10/05 (“T-NETIX
16 Reply”);
17 7. AT&T Response Joining in T-NETIX’s Motions for Summary Determination and to Stay
18 Discovery, 5/6/05 (“AT&T Joinder”);
19 8. Complainants’ Reply to AT&T’s Response Joining in T-NETIX’s Motions, 5/13/05
20 (“Opp. to Joinder”);
21 9. Declaration of Tara Herivel in Support of Complainants’ Response to AT&T’s Response
22 Joining T-NETIX’s Motion for Summary Determination, 5/11/05 (“Herivel Decl.”);
23 10. Supplemental Affidavit of Nancy Lee, 6/27/05 (“Lee June 27 Aff.”);
24 11. Transcript, 6/28/05 (“Tr.”);
25 12. Order of ALJ Rendahl, Docket No. UT-042022, 7/18/05 (“Order”);
26 13. T-NETIX Motion to Stay Discovery;
14. Complainants’ Response to T-NETIX Motion to Stay;

attached as Exhibits A-N respectively to the Declaration of Sandrin B. Rasmussen filed
herewith.

² All documents listed herein were filed within the WUTC proceeding, Docket No. 042022,
unless otherwise indicated.

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IV. DISCUSSION

A. Procedural Background

This case was filed on August 1, 2000, claiming that several entities – AT&T, GTE, CenturyTel, Northwest Telecommunications (d/b/a PTI), US West and T-NETIX – were liable under The Washington Consumer Protection Act, RCW § 19.86 *et seq.*, for allegedly failing to disclose the rates applied to calls placed from prisons in the state of Washington as required by RCW § 80.36.520. All defendants moved to dismiss the complaint.

This Court dismissed GTE (which became Verizon), US West (which became Qwest), CenturyTel, and PTI with prejudice on the ground that they were exempt from RCW § 80.36.520 during the relevant period of this case.³ That is, the Commission's rule implementing that statute, WAC 480-120-141, expressly exempted all local exchange carriers ("LECs"), which necessarily included these defendants, until the rule's amendment in 1999 deleting the LEC exemption. After amendment, these defendants petitioned for and obtained waivers from WAC 480-120-141 lasting through December 2000. The Commission held that these waivers precluded liability against GTE, CenturyTel, US West and PTI; the Court of Appeals and the Supreme Court of Washington affirmed that decision. *Judd v. AT&T Co.*, 116 Wn. App. 716, 66 P.3d 1102 (2003), *aff'd* 152 Wn.2d 195, 95 P.3d 337 (2004).

By orders dated November 8, 2000, this Court stayed all claims against AT&T and T-NETIX pending a referral to the WUTC on the question of whether these entities were subject to RCW § 80.36.520, and if so whether these entities failed to comply with the rate disclosure requirement in that statute.

Plaintiffs activated the primary jurisdiction referral through a complaint filed with the WUTC on November 14, 2004. On December 15, 2004, AT&T filed a Motion for Summary

³ The relevant period is August 1, 1996 to August 1, 2000 by operation of RCW § 19.86.120.

1 Determination, seeking dismissal of the primary jurisdiction referral on the ground that
2 AT&T is not an operator service provider ("OSP") and is thus not bound by the rate
3 disclosure obligation of WAC 480-120-141 or RCW § 80.36.520. Plaintiffs requested
4 discovery in order to respond to that motion, and presiding Administrative Law Judge Ann
5 Rendahl issued, after a conference with the parties, a Scheduling Order authorizing the
6 initiation of discovery.

7 T-NETIX propounded a limited set of Data Requests to Plaintiffs pursuant to that
8 order, in response to which Plaintiffs produced all available phone bills listing inmate calls
9 alleged to have violated rate disclosure requirements, as well as the persons who placed the
10 calls and the correctional facilities in which they were housed. *See* Declaration of Sandrin
11 Rasmussen ("Rasmussen Declaration"), Attachments to Exhibit C. Analysis of the
12 information and documents produced revealed that Plaintiffs do not have standing to pursue
13 their claims, as all disputed calls were rated, provided and billed by GTE, CenturyTel or PTI
14 – LECs that were exempt from rate disclosure under waivers deemed valid by both the Court
15 of Appeals and the Supreme Court.

16 On April 21, 2005, T-NETIX filed a Motion for Summary Determination requesting
17 that the Complaint be dismissed for lack of standing, along with a Motion to Stay Discovery.
18 *See* Rasmussen Declaration, Exhibits C and M. AT&T joined in those motions by a separate
19 filing on May 6, 2005. *See* Rasmussen Declaration, Exhibit G. Plaintiffs opposed all
20 motions. *See* Rasmussen Declaration, Exhibits E and N.

21 Oral argument was heard June 28, 2005, at the close of which ALJ Rendahl ruled
22 from the bench and denied T-NETIX's motion primarily on the ground that "I just do not feel
23 comfortable in the Commission's role on a referral in primary jurisdiction in telling the
24 Superior Court this should be dismissed on that basis." *See* Rasmussen Declaration, Exhibit
25 K, at 66:14-68:1. The subsequent written order states that the motion was denied on the
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DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 5

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Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 ground that (1) there are “questions as to the role of T-Netix,” and (2) the Commission
2 cannot dismiss a case that it had received *via* primary jurisdiction from this Court. *See*
3 Rasmussen Declaration, Exhibit L, ¶¶ 34-35. ALJ Rendahl further ordered that discovery
4 resume on the merits of Plaintiffs’ allegations. *See* Rasmussen Declaration, Exhibit K, at
5 69:11–70:2.

6 **B. Factual Background**

7 Inmate telephone services in correctional facilities operated by the Washington
8 Department of Corrections (“DOC”) are provided pursuant to exclusive contracts between
9 the state and a certificated service provider awarded pursuant to a public bidding process.
10 RCW § 39.04.210 - .220 (governing public works contracts for correctional facilities). The
11 public bidding process is administered by the DOC under the supervision of the Washington
12 Department of General Administration. RCW § 39.04.210(1).

13 The DOC has established a detailed set of policy guidelines for inmate telephone
14 service. Washington State Department of Corrections, Telecommunications Infrastructure
15 Distribution Standards (Ed. 5.2) (June 15, 2005) available at:

16 <http://www.doc.wa.gov/general/WSDOC%20TDIS%20V5.2.pdf>

17 These guidelines cover all aspects of inmate service, including hardware configuration,
18 voltage requirements, and installation restrictions. Above all, these guidelines seek to ensure
19 that the inmate telephone system “[c]omplies with security requirements at all agency
20 locations.” Standards, at 7.

21 AT&T holds an exclusive contract with the DOC to provide interLATA and
22 international services to several DOC facilities. *See* Rasmussen Declaration, Exhibit C, ¶ 9
23 and the relevant attachments thereto. AT&T is authorized to take on subcontractors to assist
24 in providing services to DOC facilities. *See* Rasmussen Declaration, Exhibit G, ¶ 9 and the
25 relevant attachments thereto. T-NETIX is a subcontractor to AT&T. *See* Rasmussen
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1 Declaration, Exhibit C, ¶ 9 and the relevant attachments thereto. T-NETIX executed a
2 subcontract with AT&T by which it has provided software used for screening, validating and
3 monitoring inmate calls to AT&T. *Id.*

4 GTE (now Verizon) and US West (now Qwest) are subcontractors to AT&T for the
5 provision of local and intraLATA calls made from certain DOC facilities. Specifically, GTE
6 contracted to serve the Twin Rivers Corrections Center, the Washington State Reformatory
7 in Monroe, the Indian Ridge Corrections Center in Arlington, and the Special Offender
8 Center in Monroe. *See* Rasmussen Declaration, Exhibit C, ¶ 9 and the relevant attachments
9 thereto. US West contracted to serve the Washington Corrections Center in Shelton, the
10 McNeil Island Penitentiary, the Washington State Penitentiary in Walla Walla, Airway
11 Heights, Tacoma Pre-Release, Cedar Creek Corrections Center and Larch Corrections
12 Center. *Id.*

13 Prior to 1998, PTI (later known as CenturyTel) was also an AT&T subcontractor. *See*
14 Rasmussen Declaration, Exhibit C, ¶ 10. PTI served several facilities, including the Clallam
15 Bay Corrections Center. *Id.* In March 1998, T-NETIX assumed only the local traffic under
16 the PTI contract. *Id.*

17 On April 4, 2005, Complainant Judd stated in verified responses to discovery that she
18 received calls from the Washington State Reformatory in Monroe and the McNeil Island
19 Detention Center. *See* Rasmussen Declaration, Exhibit C, ¶ 11. Complainant Herivel stated
20 in verified responses to discovery that she received calls from the Washington State
21 Reformatory in Monroe and Airway Heights Correctional Center. *Id.* Complainants'
22 discovery responses mark the first time that T-NETIX learned the origin of the calls at issue
23 in Complainants' claim, either in court or before the WUTC.

24 These facilities were served by GTE and US West. GTE and US West were each
25 exempt from complying with the rate disclosure requirements with respect to calls placed by
26

1 inmates, as was PTI. Under the version of WAC 480-120-141 in place from 1991 to 1999,
2 all local exchange carriers (“LECs”) were expressly exempted from these requirements. In
3 addition, when the rule was amended in 1999 to include LECs, US West, GTE and PTI
4 obtained waivers of the rule from the Commission that extended through the fourth quarter of
5 2000. *Judd*, 116 Wn. App. at 769, 66 P.3d at 1106-07 & n.8. It was for these reasons that
6 this Court dismissed US West, GTE and PTI from this case. *Id.*, at 770.

7 **V. STANDARD OF REVIEW**

8 Summary judgment will be granted “if the pleadings, depositions, and admissions on
9 file, together with the affidavits, if any, show that there is no genuine issue as to any material
10 fact and that the moving party is entitled to a judgment as a matter of law.” *E.g., Blenheim v.*
11 *Dawson & Hall Ltd.*, 35 Wn. App. 435, 439, 667 P.2d 125, 128 (1983). “The court must
12 consider all facts submitted and all reasonable inferences from the facts in the light most
13 favorable to the nonmoving party.” *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030
14 (1982). Further, “[a] party may not avoid an opponent’s motion for summary judgment by
15 resting on mere allegations of its complaint but must set forth specific facts showing that
16 there is a genuine issue of material fact.” *129 Retail Store Employees Local 631 v. Totem*
17 *Sales, Inc.*, 20 Wn. App. 278, 281, 579 P.2d 1019 (1978).

18 **VI. ARGUMENT**

19 **A. Standing is a Threshold Issue of Justiciability in All CPA Cases**

20 Persons must have standing to pursue claims under the Consumer Protection Act.
21 Indeed, the statute itself states that “[a]ny person who is injured in his business or property”
22 may seek relief under the CPA. RCW § 19.86.090. For this reason, the Supreme Court of
23 Washington established in 1986 that all private CPA plaintiffs must show “injury to plaintiff
24 in his or her business or property” as an element of any claim. *Hangman Ridge Training*
25 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 785, 719 P.2d 531 (1986). The
26

1 purpose of this element is “to establish that he or she has suffered harm.” *Id.*, 105 Wn.2d, at
2 792. The Court further explained that “the injury involved need not be great, but it must be
3 established.” *Id.* This injury requirement acts as the test for standing under the CPA.
4 *Washington State Physicians Ins. & Exch. Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 311-12,
5 858 P.2d 1054 (1993) (holding that doctors have standing to sue drug manufacturer when
6 prescribed drug harms their patients).

7 This injury requirement essentially adopts for CPA claims what bedrock standing
8 doctrine already requires: “In essence the question of standing is whether the litigant is
9 entitled to have the court decide the merits of the dispute or of particular issues.” *Warth v.*
10 *Seldin*, 422 U.S. 490, 498 (1975). Or, according to the Washington Supreme Court, “[t]o
11 have standing, one must have some protectable interest that has been invaded or is about to
12 be invaded.” *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1985).

13 Plaintiffs bear the burden of establishing their standing to seek relief. *Allan v. Univ.*
14 *of Wash.*, 140 Wash.2d 323, 329, 997 P.2d 360, 363 (2000) (citing *Lujan v. Defenders of*
15 *Wildlife*, 504 U.S. 555, 566 (1992)). This burden includes “a factual showing of perceptible
16 harm.” *Id.* (holding that wife of professor lacked standing to challenge amendments to the
17 University of Washington faculty disciplinary code). Ms. Judd and Ms. Herivel are thus
18 required to produce evidence demonstrating that they have suffered harm as a result of T-
19 NETIX’s conduct. They have been unable to do so.

20 Standing is not an optional consideration in Washington courts, *Orion*, 103 Wn.2d
21 441, 455 693 P.2d 1369, 1377 (1985), and Plaintiffs are required to demonstrate their right to
22 seek relief in order to have their claims heard. *Allan*, 140 Wn.2d at 329, 997 P.2d at 363. As
23 T-NETIX demonstrates below, Plaintiffs have not made this demonstration.

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DEFENDANT T-NETIX, INC.’S
MOTION FOR SUMMARY JUDGMENT - 9

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LAW GROUP
Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 **B. The WUTC Refused to Address Whether Plaintiffs Have Standing**

2 T-NETIX returns to this Court to resolve the threshold question of standing that the
3 WUTC would not address. Analysis of ALJ Rendahl's reasoning in denying T-NETIX's
4 motion reveals that the denial was borne not out of analysis of standing, but rather a
5 reluctance to decide the issue at all. As such, the parties are presently litigating issues of
6 substantive merit before that agency on behalf of persons who lack standing and to whom the
7 Court cannot grant relief. *Hangman Ridge*, 105 Wn.2d at 792; *Fisons Corp.*, 122 Wn.2d at
8 311-12.

9 ALJ Rendahl does not dispute that Plaintiffs' standing is questionable. Nor does she
10 dispute the fact that the WUTC, under its own precedent governing standing requirements,
11 "do[es] not give advisory opinions." See Rasmussen Declaration, Exhibit K, at 67:6. Rather,
12 she "do[es] not feel comfortable in the Commission's role on a referral in primary
13 jurisdiction in telling the Superior Court that this should be dismissed on that basis." See
14 Rasmussen Declaration, Exhibit K, at 66:20-23. She thus instructed the parties that standing
15 "may be a valid point to raise to the Superior Court ... and I think you are all correct that
16 it is an important consideration for Judge Learned in deciding what to do with this case
17 when it comes back to her[.]" See Rasmussen Declaration, Exhibit K, at 66:23-67:4. But
18 ALJ Rendahl denied T-NETIX's Motion on the ground that "it is not the Commission's role
19 to dismiss this case." See Rasmussen Declaration, Exhibit K, at 67:4-5.

20 ALJ Rendahl reiterated this refusal in her subsequent *Order*, stating that "it would be
21 inappropriate for the Commission not to address the questions referred by the Superior
22 Court." See Rasmussen Declaration, Exhibit L, ¶ 37. In fact, she went so far as to hold that
23 "the Commission does not have jurisdiction to decide the issue of standing." *Id.* In plain
24 terms, she refused to decide the question of standing at all.

1 ALJ Rendahl also stated in the subsequent *Order* that "Complainant's affidavits and
2 pleadings raise questions as to the role of T-Netix and AT&T in connecting the calls between
3 the correctional institutions and the Complainants." See Rasmussen Declaration, Exhibit L, ¶
4 34. These "questions," she reasoned created a disputed material facts that prevented her from
5 dismissing the case. *Id.* Yet as T-NETIX had argued in its moving papers, the question of T-
6 NETIX's "role" is immaterial where Plaintiffs have no injury in the first instance. See
7 Rasmussen Declaration, Exhibit F, ¶ 6. See also Rasmussen Declaration, Exhibit K, at 30:3-
8 9. Delving into the "role" of T-NETIX and AT&T by its nature assumes that injury exists,
9 and some entity must provide relief. As such, the question for which ALJ Rendahl demands
10 an answer is a core merits issue, and one that no tribunal should reach when the parties
11 before it have no justiciable claim.

12 Moreover, ALJ Rendahl's concern over these questions is analytically no different
13 than her reluctance to dismiss the proceeding. The "role" T-NETIX and AT&T played in the
14 challenged inmate calls is the very question this Court referred to the WUTC:

- 15
- 16 (1) "[W]hether or not [AT&T is] considered by the agency to
17 be an OSP under the contracts at issue herein, and if so if
18 the regulations have been violated." Rasmussen
19 Declaration, Exhibit B.
- 20 (2) "[T]he matter is referred to the [WUTC] for further
21 proceeding to determine if T-Netix has violated WUTC
22 regulations." Rasmussen Declaration, Exhibit A.

22 Thus, the "questions as to the role of T-NETIX and AT&T in connecting the calls,"
23 Rasmussen Declaration, Exhibit L, at ¶ 34, are in fact the primary jurisdiction questions. In
24 demanding an answer to them, ALJ Rendahl is effectively reiterating her belief that "it would
25 be inappropriate" not to answer the Court's questions. Rasmussen Declaration, Exhibit L, at
26 ¶ 37. Her decision on standing is actually not to decide.

DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 11

BADGLEY ~ MULLINS

LAW GROUP

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 T-NETIX, therefore, requests that the Court resume control of this case in order to do
2 what the WUTC felt it could not: apply fundamental standing doctrine to the facts of this
3 case and dismiss Plaintiffs' claims.

4
5 **C. This Proceeding Should Be Dismissed Because**
6 **Neither Complainant has Standing**

7 The plain facts of this case demonstrate that Plaintiffs do not have standing under the
8 CPA. Washington Courts apply a two-part test to determine whether a complainant has
9 standing: (1) complainant must demonstrate injury, financial or otherwise ("injury in fact");
10 and (2) complainant must have an interest that is within the "zone of interest" of the type that
11 the Commission regulation is designed to protect. *Save a Valuable Environment (SAVE) v.*
12 *City of Bothell*, 89 Wn.2d 862, 865-868, 576 P.2d 401, 403-404 (1978)). In any case, both
13 the injury in fact and the zone of interest are defined by the statute sought to be enforced.
14 *See id.*

15 In this case, the standing criteria articulated by the Supreme Court are defined by the
16 relevant statute, RCW § 80.36.520. That statute requires the WUTC to adopt rules that
17 "assure appropriate disclosure to consumers of the provision and the rate, charge or fee of
18 services provided by an alternate operator services company." *Id.* As explained above, the
19 WUTC's rule implementing this statute, WAC 480-120-021, specifically exempted all LECs
20 until 1999, and from 1999 through 2000 these LECs – GTE, US West and PTI – operated
21 under WUTC waivers of the implementing rule. The effect of these waivers was that the
22 rates that these carriers charged for inmate calls were not subject, during the relevant period
23 of this case, to the disclosure requirements of RCW § 80.36.520. As such, Complainants
24 Judd and Herivel could not have suffered any injury or been within the zone of interest of the
25 statute they seek to enforce, and thus are unable to demonstrate "injury ... in his or her
26 business or property" as the CPA requires. *Hangman Ridge*, 105 Wn.2d at 785.

1 1. Neither Complainant Has Suffered Injury in Fact

2 In order to have standing to pursue any claim against T-NETIX, Complainants Judd
3 and Herivel must allege that they received a call that involved T-NETIX and were in some
4 way injured by it. *Fisons Corp.*, 122 Wn.2d at 311-12; *SAVE*, 89 Wn.2d at 865-868. But
5 neither Judd nor Herivel could have been injured by the calls they received from inmates that
6 involved T-NETIX.

7 The material facts of this matter are not subject to dispute. First, Complainants'
8 phone bills indicate that all of the inmate-initiated calls they received were intraLATA calls.
9 *See* Rasmussen Declaration, Exhibit K, at 40:18-41:3; *See* Rasmussen Declaration, Exhibit
10 C, at ¶¶ 8-9; *see* Rasmussen Declaration, Exhibit E, at ¶¶ 17-18. Second, all of these calls
11 were carried by PTI, US West or GTE. *Id.* Third, each of these carriers was exempt from or
12 had received waivers from the rate disclosure requirements of Commission Rule 480-120-
13 141. *See* Rasmussen Declaration, Exhibit C, at ¶¶ 15, 23; *see* Rasmussen Declaration,
14 Exhibit E, at ¶ 19. These calls were not required to include rate disclosures. Thus, as a
15 matter of law, Judd and Herivel are owed no relief for these calls.

16 2. It is Undisputed That PTI, US West or GTE Carried All Documented Calls

17 Complainants do not dispute that their written responses to discovery identify the
18 correctional facilities from which the allegedly non-compliant calls originated. Rasmussen
19 Declaration, Exhibit E, at ¶¶ 17-18. Ms. Judd identified the Washington State Reformatory
20 in Monroe and the McNeil Island Detention Center. *See* Rasmussen Declaration, Exhibit C,
21 at ¶ 11. Complainant Herivel stated that she received calls from the Washington State
22 Reformatory in Monroe and Airway Heights Correctional Center. *Id.*

23 Contracts filed in this record by both Complainants and AT&T identify the facilities
24 that GTE served for purposes of local and intraLATA calls. They include the Washington
25 State Reformatory in Monroe. *See* Rasmussen Declaration, Exhibit C, at ¶ 9. US West
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1 served McNeil Island and Airway Heights for both local and intraLATA calls. *Id.* Thus, as
2 an initial matter, it is not subject to dispute that US West and GTE carried the local and
3 intraLATA traffic from the three correctional facilities identified by Complainants as
4 comprising the scope of their claims.

5 3. It is Undisputed That All Inmate Calls Documented by Complainants
6 Were Local or IntraLATA

7 In order to verify that, as Complainants have stated, every inmate call that they
8 received from these three facilities belonged to either US West or GTE, T-NETIX has
9 researched all of the considerable number of phone bills that Complainants have produced.
10 This research entails entering originating and terminating phone numbers into a database to
11 learn whether a call is local, intraLATA, or interLATA. The attached affidavit of Nancy
12 Lee, T-NETIX Senior Vice President of Billing Services, describes and verifies this research.
13 *See* Rasmussen Declaration, Exhibit D, at ¶ 3. Plaintiffs concede that this research is correct.
14 *See* Rasmussen Declaration, Exhibit K, at 40:18–41:3.

15 4. T-NETIX Has No Record of Any InterLATA Calls to Plaintiff Herivel

16 After the close of briefing on the T-NETIX Motion at the Commission, Plaintiff Tara
17 Herivel alleged that she had received an interLATA call from Airway Heights Correctional
18 Center, near Spokane, at some time between October 1 and December 31, 1998. *See*
19 Rasmussen Declaration, Exhibit I, at ¶ 4. This one interLATA call, counsel contended,
20 establishes that not all calls at issue in this case were covered by the LEC exemptions and
21 waivers to RCW 80.36.520. On this ground, Ms. Herivel argues that she in fact has standing
22 to pursue this case.

23 None of the months of phone bills that Ms. Herivel produced include reference to a
24 call from Airway Heights, as she concedes. *See* Rasmussen Declaration, Exhibit H, at ¶¶ 8-
25 9. Ms. Herivel conceded that she has no corroborating evidence of that call, because
26 “Qwest/US West does not provide copies for bills that far in the past.” *See* Rasmussen

1 Declaration, Exhibit I, at ¶ 3. In addition, T-NETIX has no record of Ms. Herivel receiving
2 any calls from Airway Heights. See Rasmussen Declaration, Exhibit J, at ¶ 3. Thus, there is
3 no evidence that Ms. Herivel in fact received this call. As such, Ms. Herivel has failed to
4 satisfy her burden to make “a factual showing of perceptible harm” as the doctrine of
5 standing requires her to do. *Allan*, 140 Wn.2d at 329.

6 **5. All Inmate Calls Received By Complainants Were Exempt From RCW § 80.36.520**

7 The record demonstrates that all of the calls received by Judd and Herivel were
8 carried by US West, PTI or GTE. In addition, as explained above, it is not subject to dispute
9 that US West, PTI and GTE were exempt from all rate disclosure rule for inmate-initiated
10 local and intraLATA calls through 2000. *Judd*, 116 Wn. App. at 769, 66 P.3d at 1106-07 &
11 n.8. Thus, if Complainants received no rate disclosure information for these calls, as they
12 allege, that omission was permitted by this Commission.

13 The undisputed facts of this matter demonstrate that T-NETIX is entitled to judgment
14 as a matter of law. *Blenheim*, 35 Wn. App. at 439, 667 P.2d at 128. They show that
15 Complainants were not entitled to receive rate disclosure information for any inmate-initiated
16 calls they received. Accordingly, they have suffered no injury. And having suffered no
17 injury, Complainants Judd and Herivel lack standing to pursue their claims, requiring
18 dismissal of this matter. *SAVE*, 89 Wn.2d at 865-868, 576 P.2d at 403-404.

19 **D. Neither Complainant is in The Zone of Interest**

20 Plaintiffs must demonstrate that they were owed a duty under RCW 80.36.520 in
21 order to bring their CPA claim. *Fisons Corp.*, 122 Wn.2d at 311-12, 858 P.2d at 1060-61;
22 *SAVE*, 89 Wn.2d at 865-868, 576 P.2d at 403-404. That duty attaches if the rates of the
23 inmate calls Plaintiffs received were subject to RCW 80.36.520.

24 PTI, GTE and US West were all exempt from Commission Rule 480-120-141, and
25 thus from RCW 80.36.520. *Judd*, 116 Wn. App. at 769, 66 P.3d at 1106-07 & n.8. These
26

1 carriers owed no duty to Judd or Herivel under that rule. Accordingly, neither Judd nor
2 Herivel are within the zone of interest of RCW § 480-120-021, and they lack standing to
3 enforce it. Their claim should be dismissed. See *SAVE*, 89 Wn.2d at 865-868, 576 P.2d at
4 403-404.

5 **E. The Court Should Rescind its Primary Jurisdiction Referral to the WUTC**

6 Neither Judd nor Herivel may pursue their claim before this Court, because the
7 material facts of this case demonstrate that they have no protectable interest in rate
8 disclosures. See *Orion*, 103 Wn.2d at 454, 693 P.2d at 1377. There is no controversy that
9 this Court can adjudicate; dismissal is therefore required. Dismissal of this case thus relieves
10 the WUTC of its duty to comply with this Court's primary jurisdiction referral, and as such
11 the Court should withdraw its request.

12 The doctrine of primary jurisdiction instructs that courts, when presented with a claim
13 against a regulated entity, should defer consideration of that claim in order to obtain the
14 expert opinion of the regulating agency regarding the defendant's conduct. The Supreme
15 Court of Washington has followed this doctrine through strict adherence to the precedent of
16 the United States Supreme Court. *In re Real Estate Brokerage Antitr. Litig.*, 95 Wn.2d 297,
17 302-04, 622 P.2d 1185, 1188-89 (1980); *Schmidt v. Old Union Stockyards Co.*, 58 Wn.2d
18 478, 482-84, 364 P.2d 23, 26-27 (1961). The Washington Supreme Court has emulated that
19 Court's description of the doctrine, stating that primary jurisdiction "comes into play
20 whenever enforcement of the claim *requires resolution* of issues which, under a regulatory
21 scheme, have been placed within the special competence of an administrative body[.]"
22 *Schmidt*, 58 Wn.2d at 484, 364 P.2d at 27 (quoting *United States v. Western Pac. R.R. Co.*,
23 352 U.S. 59 (1956)) (emphasis added).

24 The Supreme Court has since developed a three-part test for determining whether a
25 referral to an agency under primary jurisdiction is appropriate: (1) the agency would have the
26

1 authority to resolve the issue had complainants brought the claim there; (2) the agency has
2 "special competence" over the controversy that renders it more capable of resolving the
3 dispute than the court; and (3) the claim must involve issues that are subject to "a pervasive
4 regulatory scheme" such that "the danger exists that judicial action would conflict with the
5 regulatory scheme." *Vogt v. Seattle-First National Bank*, 117 Wn.2d 541, 553-55, 817 P.2d
6 1364, 1371-72 (1991) (citing *In re Real Estate*, 95 Wn.2d at 302-303).

7 This test makes clear that the purpose of a primary jurisdiction referral is to assist the
8 court in resolving only the case or controversy brought in a civil lawsuit. It is a narrow
9 inquiry that, in essence, asks "what relief would the agency provide to this plaintiff?" In this
10 lawsuit here, Judd and Herivel seek damages under RCW 19.86 based on alleged failures to
11 provide rate information for inmate-initiated collect calls. As reflected in the Court's
12 November 8, 2000 Orders, this Court found that the necessary predicate to Judd's and
13 Herivel's claim is a violation of Commission Rule 480-120-141.

14 This Court's referral to the WUTC requested a determination of whether T-NETIX
15 and AT&T are operator service providers within the meaning of RCW 80.36.520, and if so
16 whether they had violated that statute by virtue of failing to comply with Commission Rule
17 480-120-021. This referral was of course predicated on the belief that Judd's and Herivel's
18 claims may go forward. With all evidence demonstrating that these plaintiffs in fact have no
19 viable claims, this Court has no need of the WUTC's assistance. Accordingly, this Court
20 does not 'require resolution' of any regulatory issue within the WUTC's expertise, *Schmidt*,
21 58 Wn.2d at 484-85, 364 P.2d at 27, warranting rescission of the Court's primary jurisdiction
22 referral.

23 Absent this relief, the WUTC will require T-NETIX to adjudicate this matter fully,
24 undergoing extension written and deposition discovery, to resolve a regulatory question in a
25 dispute that cannot be tried. ALJ Rendahl has stated that she intends to resolve the Court's
26

DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 17

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Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 referral fully, and leave it to the parties to return to this Court and ask for dismissal. T-
2 NETIX therefore respectfully requests that this Court relieve both the parties and the WUTC
3 of this burden by closing this case and withdrawing the referral.

4 DATED this 26th day of July, 2005.

5 BADGLEY~MULLINS LAW GROUP

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8 Donald H. Mullins WSBA #4966
9 Sandrin B. Rasmussen WSBA #11735

10 Of Counsel:
11 Glenn B. Manishin
12 Stephanie A. Joyce
13 Kelley Drye & Warren LLP
14 1200 19th Street, N.W., Suite 500
15 Washington, D.C. 20036

16 Attorneys for Defendant T-NETIX, Inc.

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DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 18

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LAW GROUP

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of July, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T:

Letty S. Friesen
AT&T Communications of the Pacific
Northwest
Law Department
919 Congress Avenue, Suite 900
Austin TX 78701-2444

Hand Delivered
X U.S. Mail (first-class, postage prepaid)
Overnight Mail (UPS)
Facsimile (303) 298-6301
X Email (lsfriesen@att.com)

On Behalf Of Judd & Herivel:

Jonathan P. Meier
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle WA 98104

Hand Delivered
X U.S. Mail (first-class, postage prepaid)
Overnight Mail (UPS)
Facsimile (206) 223-0246
X Email (jon@syllaw.com)

On Behalf Of AT&T:

Charles H. Peters
Schiff Hardin LLP
233 South Wacker Drive
6600 Sears Tower
Chicago IL 60606

Hand Delivered
X U.S. Mail (first-class, postage prepaid)
Overnight Mail (UPS)
Facsimile (312) 258-5600
X Email (cpeters@schiffhardin.com)

On Behalf Of The Washington Utilities and Transportation Commission:

Judge Ann E. Rendahl
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Hand Delivered
X U.S. Mail (first-class, postage prepaid)
Overnight Mail (UPS)
Facsimile (312) 258-5600
X Email (arendahl@wutec.wa.gov)



Christina Limon

DEFENDANT T-NETIX, INC.'S
MOTION FOR SUMMARY JUDGMENT - 19

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LAW GROUP

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

EXHIBIT 1

The Honorable Kathleen Learned
Hearing Date: August 26, 2005
Hearing Time: 10:00 p.m.

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

Plaintiffs,

v.

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

No. 00-2-17565-5 SEA

**ORDER GRANTING
DEFENDANT T-NETIX'
MOTION FOR
SUMMARY JUDGMENT
(proposed)**

**ORDER GRANTING T-NETIX INC.'S
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER having come on for hearing before this Court on the Motion of
Defendant T-NETIX, Inc. for Summary Judgment, the Court having reviewed the Motion
and the Declaration of Sandrin B. Rasmussen in support thereof, and the exhibits attached
thereto, all filing of other defendants joining or opposing the Motion for Summary Judgment,
if any, and all responsive documents filed by plaintiffs herein, if any, and the reply

**ORDER GRANTING DEFENDANT T-NETIX'
MOTION FOR SUMMARY JUDGMENT - 1**

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Bank of America Tower
7012 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 documents filed by T-NETIX, if any; and the Court having heard oral argument of counsel
2 for the parties, it is now hereby

3 ORDERED, ADJUDGED AND DECREED that T-NETIX' Motion for Summary
4 Judgment is GRANTED.

5 DONE IN OPEN COURT this day of August, 2005.

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The Honorable Dean S. Lum

Presented by:
BADGLEY~MULLINS LAW GROUP

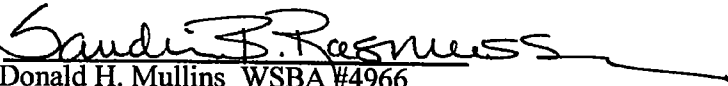
By 
Donald H. Mullins WSBA #4966
Sandrin B. Rasmussen WSBA #11735
Attorneys for Defendant T-NETIX, Inc.

Exhibit 2

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and)
ZURAYA WRIGHT, for themselves, and on)
behalf of all similarly situated persons,)

Plaintiffs,)

v.)

AMERICAN TELEPHONE AND TELEGRAPH)
COMPANY; GTE NORTHWEST INC.;)
CENTURYTEL TELEPHONE UTILITIES,)
INC.; NORTHWEST)
TELECOMMUNICATIONS, INC., d/b/a/ PTI)
COMMUNICATIONS, INC.; U.S. WEST)
COMMUNICATIONS, INC.; T-NETIX, INC.,)

Defendants.)

No. 00-2-17565-5 SEA

**DEFENDANT T-NETIX, INC.'S
REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY
JUDGMENT (Shortened)**

T-NETIX, Inc. ("T-NETIX"), by its attorneys and pursuant to Civil Rule and Local Rule 56, hereby files this Reply in support of its Motion for Summary Judgment ("MSJ").

I. SUMMARY

Plaintiffs have failed to make the requisite demonstration of standing, as they are unable to state why, in the face of the exemptions and waivers from rate-disclosure obligations granted to GTE, US West, and PTI by the Washington Utilities & Transportation Commission ("WUTC" or "Commission"), the lack of such disclosures on the inmate-initiated calls they received constitutes cognizable injury. Plaintiffs' Opposition (Aug. 15, 2005) ("Opp.") focuses instead on cluttering the record with irrelevant documents that purport to transform T-NETIX from an equipment provider to an operator services provider ("OSP"). They attempt to show

DEFENDANT T-NETIX, INC.'S
REPLY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT (Shortened) - 1

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Law Group
Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

1 that T-NETIX violated the WUTC's rule requiring rate disclosures, WAC 480-120-141, and
2 wrongly conclude that T-NETIX is liable under the Consumer Protection Act, RCW § 19.86 *et*
3 *seq.*, but plaintiffs' effort fails as a matter of law.

4 **II. ARGUMENT**

5 **A. The Full WUTC Has Refused to Resolve the Issue of Standing**

6 On August 18, 2005, the full Commission upheld ALJ Ann Rendahl's decision not to
7 address the substance of T-NETIX's motion regarding standing. Dec. of Stephanie Joyce, Ex.
8 1 (Aug. 22, 2005). Contrary to plaintiffs' assertion, Opp. at 7:4-17, the Commission has
9 declined to resolve standing. The question of standing is now squarely and solely before the
10 Court which, in accordance with settled doctrine, must reject all claims for which the
11 proponents lack standing. MSJ at 8:22-9:6 (quoting, *inter alia*, *Hangman Ridge Training*
12 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 685, 719 P.2d 531 (1986)).

13 **B. Plaintiffs Have Failed to Meet Their Burden of Establishing Standing**

14 It is undisputed that the calls received by plaintiffs (save the mercurial interLATA call
15 claimed by Herivel discussed below) were local or intraLATA, were carried by LECs, and that
16 those LECs were exempt during the entire relevant period of this case from the Commission's
17 rate disclosure rule, WAC 480-120-141. MSJ at 13:1-14:13; Opp. at 2:13-3:3 ("exemptions
18 and waivers applied only to specific companies").

19 It is also undisputed that plaintiffs bear the burden of demonstrating that they have
20 standing. MSJ at 8:20-9:23; Opp. at 14:9 ("We agree."). On these undisputed facts and
21 principles, T-NETIX is entitled to judgment as a matter of law. MSJ at 8:8-11 (quoting
22 *Blenheim v. Dawson & Hall Ltd.*, 35 Wn. App. 435, 439, 667 P.2d 125, 128 (1983)).

23 Because T-NETIX has established by the sworn affidavit of Nancy Lee that Tara
24 Herivel did not receive a call handled by T-NETIX from Airway Heights Correctional Center
25 for the period October 1, 1998 to December 31, 1998, Ms. Herivel's new declaration (her
26 second attempt to show injury) states that the call could have been "*somewhere between June*

1 *1, 1998 and December 31, 1998.*” Dec. of Tara Herivel ¶6 (Aug. 9, 2005).¹ In response to
2 Ms. Herivel’s submission of this additional “evidence,” T-NETIX conducted call research to
3 find a record of any call from Airway Heights to Ms. Herivel for the period June 1, 1998
4 through December 31, 1998. T-NETIX was unable to locate any record of such a call. Dec. of
5 Nancy Lee ¶ 3 (Aug. 22, 2005).

6 T-NETIX is aware that the standard for summary judgment requires that the Court
7 make all inferences in favor of non-movants, here the Plaintiffs. MSJ at 8:11-13 (quoting
8 *Wilson v. Steinback*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)). Given that Ms. Herivel’s
9 averments have been both late (the interLATA call was raised after briefing on T-NETIX’s
10 motion at the WUTC) and inconsistent with her other testimony, their weight pales in
11 comparison to the two sworn statements of Nancy Lee, and the fact that plaintiffs *do not and*
12 *will never have a record of this call.* Even granting Ms. Herivel all inferences, the
13 preponderance of evidence shows that she did not receive an interLATA call.

14 **C. The LEC Waivers Are Dispositive of the Question of Standing**

15 The Washington Supreme Court upheld the waivers that the WUTC granted to US
16 West, GTE and PTI. *Judd v. AT&T Co.*, 152 Wn.2d 195, 95 P.3d 337 (2004). Thus, the
17 entities that carried, rated, billed and collected for all documented calls in this proceeding were
18 excused from giving Ms. Judd and Ms. Herivel audible rate disclosures for inmate-initiated
19 calls.

20 Plaintiffs now argue that it was T-NETIX that was required to provide rate quotes, even
21 though T-NETIX was not the service provider; AT&T holds the contract for inmate services
22 with the Washington Department of Corrections (MSJ at 6:21-23). In other words, AT&T
23 seeks to hold T-NETIX liable under a rule that applies to telecommunications service providers
24 dealing with the public, despite that T-NETIX only provided equipment to AT&T. This

25 _____
26 ¹ She remains unclear whether it was one call or more. *Compare id.* ¶ 2 (“at least one inmate-
initiated call”) *with id.* ¶ 7 (“the inmate-initiated telephone call”) (emphasis added).

1 argument is akin to holding Lucent, a switch manufacturer, liable for Qwest's past cramming
2 and slamming violations.²

3 Contrary to the opposition's assertions, the record does not contain "overwhelming
4 evidence" that T-NETIX is an OSP. Opp. at 14:14. Plaintiffs' statement that T-NETIX
5 "admits it maintained its operator services platform" is woefully misleading, Opp. at 11:14-15,
6 inasmuch as T-NETIX actually stated that it "maintained a P-III platform" at such locations.
7 T-NETIX also responded to more than 25 nearly identical discovery questions, stating that T-
8 NETIX is not an OSP.

9 In fact, the entire Motion for Summary Determination pending before the WUTC
10 demonstrates why T-NETIX cannot be an OSP as a matter of law. Plaintiffs' reliance on **one**
11 **page** of that motion, taken out of context, to describe T-NETIX' services is inappropriate.
12 Opp. at 14:4 & Meier Decl. Exh. 18. Though T-NETIX could append to this Reply its full
13 motion to further refute Plaintiffs' assertions, it is simply irrelevant to question of standing that
14 will be decided here and rewards Plaintiffs' efforts to confuse the issue.

15 In their effort to transform T-NETIX into an OSP, plaintiffs rely upon an Order of the
16 FCC granting T-NETIX a waiver of federal rate disclosure requirements. Meier Dec. Ex. 3.
17 Their reliance is misplaced. As a matter of law, the Order only applies to interstate calls; the
18 FCC can regulate only "interstate communications," 47 U.S.C. § 151, and the governing
19 federal statute defines operator services as an *interstate* service. 47 U.S.C. § 226(a)(7).

20 T-NETIX does act as an OSP in some correctional facilities *not at issue in this case*,
21 and is subject to the FCC's rate disclosure rules in some instances. But inmate services
22 comprise many different components: *e.g.*, equipment, OSP service, local calling, intraLATA

23 ² Plaintiffs also suggest that T-NETIX may be liable under WUTC Rule WAC 480-120-141
24 for "contracting with" a non-compliant operator services provider. Opp. at 18 n.6. That
25 Plaintiffs have again raised the argument borders on bad faith. The Washington Court of
26 Appeals, reviewing Plaintiffs appeal two years ago challenging the validity of the WUTC rule
waivers, held that the enabling statute cannot be used to support liability for those that
"contract with" OSPs. *Judd v. AT&T Co.*, 116 Wn.2d 716, 66 P.3d 1102, 1108 (2003).

DEFENDANT T-NETIX, INC.'S
REPLY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT (Shortened) - 4

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Fax: (206) 621-9686

1 and interLATA calling. Accordingly, the role of any entity in inmate calling must be evaluated
2 on a site-specific basis, and T-NETIX's presence should be evaluated for the facilities from
3 which Complainants' calls originated: Monroe, McNeil Island, and Clallam Bay.³ In those
4 facilities, as T-NETIX has stated (and plaintiffs do not contest), inmates are served by GTE
5 and US West, two LECs that obtained rule waivers.

6 The effect of the LEC waivers is simply intuitive. The fact that the LECs requested
7 these waivers demonstrates their acknowledgment that they were the OSPs and that WAC 480-
8 120-021 applied to them. It would be nonsensical for a party to seek a waiver of a rule that did
9 not apply to it, and even more nonsensical (and legally meaningless) for the Commission to
10 grant it. Complainants' aim, having lost GTE, US West and PTI as sources of damages, is to
11 blame T-NETIX and AT&T. Yet the parties that owed a duty to disclose rates to Complainants
12 were relieved of that duty, and it cannot be transferred to T-NETIX.

13 **III. CONCLUSION**

14 For all these reasons, the Court should (1) enter summary judgment in T-NETIX's
15 favor and (2) rescind the Court's primary jurisdiction referral to the WUTC.

16 Dated: August 23, 2005

BADGLEY~MULLINS LAW GROUP

WSBA # 11735

18 *Sandra B. Rasmussen*
for Donald H. Mullins WASB #4966

19 Of Counsel:

20 Glenn B. Manishin
21 Stephanie A. Joyce
22 Kelley Drye & Warren LLP
23 1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Attorneys for Defendant T-NETIX, Inc.

24 ³ T-NETIX has not "failed to note that Ms. Judd received a call from the Clallam Bay
25 facility." Opp. at 11 n. 4. T-NETIX has made clear, and Plaintiffs do not contest, that the call
26 from Clallam Bay to Ms. Judd occurred before T-NETIX became the local services provider
there. Moreover, as Plaintiffs admit, Ms. Judd did not identify Clallam Bay in her response to
a specific discovery request from T-NETIX to identify all correctional facilities from which
inmate-initiated calls were received. *Id.*

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of August, 2005, served a true and correct copy of the foregoing document upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T:

Letty S. Friesen
AT&T Communications of the Pacific
Northwest
Law Department
919 Congress Avenue, Suite 900
Austin TX 78701-2444

Hand Delivered
U.S. Mail (first-class, postage
prepaid)
X Overnight Mail (UPS)
Facsimile (303) 298-6301
Email (lsfriesen@att.com)

U.S. Mail (first-class, postage
prepaid)
Overnight Mail (UPS)
Facsimile (202) 955-9792
Email (sjoyce@kelleydrye.com)

On Behalf Of Judd & Herivel:

Jonathan P. Meier
Sirianni Youtz Meier & Spoonemore
719 Second Avenue, Suite 1100
Seattle WA 98104

X Hand Delivered
U.S. Mail (first-class, postage
prepaid)
Overnight Mail (UPS)
Facsimile (206) 223-0246
Email (jon@sylaw.com)

On Behalf Of AT&T:

Charles H. Peters
Schiff Hardin LLP
233 South Wacker Drive
6600 Sears Tower
Chicago IL 60606

Hand Delivered
U.S. Mail (first-class, postage
prepaid)
X Overnight Mail (UPS)
Facsimile (312) 258-5600
Email (cpeters@schiffhardin.com)

***On Behalf Of The Washington Utilities and
Transportation Commission:***

Judge Ann E. Rendahl
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Hand Delivered
U.S. Mail (first-class, postage
prepaid)
X Overnight Mail (UPS)
Facsimile (312) 258-5600
Email (arendahl@wutc.wa.gov)

DEFENDANT T-NETIX, INC.'S
REPLY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT (Shortened) - 6

BADGLEY ~ MULLINS


Law Group

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

On Behalf Of AT&T:

Kelly Noonan
Michael McGinn
Stokes Lawrence, PS
800 Fifth Avenue, Suite 4000
Seattle, WA 98104

X Hand Delivered
U.S. Mail (first-class, postage
prepaid)
Overnight Mail (UPS)
Facsimile (303) 298-6301
Email
(kelly.noonan@stokeslaw.com)
(michael.mcgin@stokeslaw.com)



Christina Limon

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DEFENDANT T-NETIX, INC.'S
REPLY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT (Shortened) - 7

BADGLEY ~ MULLINS

LAW GROUP

Bank of America Tower
701 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6566
Fax: (206) 621-9686

Exhibit 3

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The Honorable Kathleen L. Carver
Hearing Date: August 26, 2005
Hearing Time: 10:00 p.m.
gmr

SEP 7 2005

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SANDY JUDD, TARA HERIVEL and
ZURAYA WRIGHT, for themselves, and on
behalf of all similarly situated persons,

No. 00-2-17565-5 SEA

Plaintiffs,

**ORDER GRANTING
DEFENDANT T-NETIX'
MOTION FOR
SUMMARY JUDGMENT**

v.

(proposed) gmr

AMERICAN TELEPHONE AND TELEGRAPH
COMPANY; GTE NORTHWEST INC.;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a/ PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX, INC.,

Defendants.

**ORDER GRANTING T-NETIX INC.'S
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER having come on for hearing before this Court on the Motion of
Defendant T-NETIX, Inc. for Summary Judgment, the Court having reviewed the Motion
and the Declaration of Sandrin B. Rasmussen in support thereof, and the exhibits attached
thereto, all filing of other defendants joining or opposing the Motion for Summary Judgment,
if any, and all responsive documents filed by plaintiffs herein, if any, and the reply

**ORDER GRANTING DEFENDANT T-NETIX'
MOTION FOR SUMMARY JUDGMENT - 1**

BADGLEY ~ MULLINS
LAW GROUP

Bank of America Tower
7012 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone: (206) 621-6966
Fax: (206) 621-9666

ORIGINAL

1 documents filed by T-NETIX, if any; and the Court having heard oral argument of counsel
2 for the parties, it is now hereby

3 ORDERED, ADJUDGED AND DECREED that T-NETIX' Motion for Summary
4 Judgment is GRANTED.

5 DONE IN OPEN COURT this day of August, 2005

6
7 *Jeffrey M. Ramsdell*
8 The Honorable ~~Dean S. Linn~~ Jeffrey M. Ramsdell

9
10 Presented by:
11 BADGLEY~MULLINS LAW GROUP

12
13 By *Sandrin B. Rasmussen*
14 Donald H. Mullins WSBA #4966
15 Sandrin B. Rasmussen WSBA #11735
16 Attorneys for Defendant T-NETIX, Inc.

** The court commends counsel
for their excellent and thoughtful
presentations on this complex
area of the law. The court
also thanks counsel for
their efforts to reduce
the number of documents
submitted for filing with
the court. This refinement
resulted in a far more
manageable set of documents
being reviewed for potential
scoping.*
JMR

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**ORDER GRANTING DEFENDANT T-NETIX'
MOTION FOR SUMMARY JUDGMENT - 2**

BADGLEY ~ MULLINS
LAW GROUP
Bank of America Tower
7012 Fifth Avenue, Suite 4750
Seattle, Washington 98104
Telephone (206) 631-4466
Fax (206) 421-9686